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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**DEVELOPERS SURETY AND
INDEMNITY COMPANY**, a California
corporation,

Plaintiff,

v.

**MICHAEL GENTRY CONSTRUCTION,
INC.**, an Oregon corporation, doing business
as **GENTRY CONSTRUCTION**; and **SARA
E. CLARK**, an individual,

Defendants.

Case No. 3:22-cv-1860

COMPLAINT FOR DECLARATORY
RELIEF

DEMAND FOR JURY TRIAL

For its Complaint against defendants Michael Gentry Construction, Inc. (“Gentry”), and
Sara E. Clark (“Clark”), plaintiff Developers Surety and Indemnity Company (“Developers”)
alleges as follows:

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PARTIES

1.

Developers is an insurance company organized under the laws of the State of California and is authorized to do business in the State of Oregon. Developers' principal place of business is in the State of California.

2.

Gentry is an Oregon corporation organized under the laws of the State of Oregon and is licensed to do business as a general contractor in the State of Oregon. Based on information and belief, Gentry's principal place of business is the State of Oregon.

3.

Clark is an individual residing in the State of Oregon.

JURISDICTION AND VENUE

4.

This court has jurisdiction under 28 U.S.C. § 1332 in that complete diversity exists between Developers, on the one hand, and Gentry and Clark, on the other, and the amount in controversy exceeds \$75,000.

5.

An actual controversy exists between the parties regarding Developers' obligations, under the liability insurance policies that it issued to Gentry, with respect to a suit brought by Clark against Gentry. Under 28 U.S.C. § 2201, Developers is entitled to a declaration from this Court regarding those obligations.

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6.

Under U.S.C. §. 1391, venue is proper in this judicial district as Gentry and Clark reside in this district. In addition, this action involves a dispute regarding the availability of insurance coverage for damages that allegedly arise in this judicial district.

BACKGROUND

7.

Developers issued to Gentry the following commercial general liability policies:

- BIS00023148-05 (effective 09/23/2019 - 09/23/2020) (“Policy 5”)
- BIS00023148-06 (effective 09/23/2020 - 09/23/2021) (“Policy 6”)

A copy of Policy 5 is attached as Exhibit 1 and is incorporated herein by reference. A copy of Policy 6 is attached as Exhibit 2 and is incorporated herein by reference. Both Policy 5 and Policy 6 are referred to herein as the “Policies”.

8.

Gentry filed an action against Clark, and Clark and filed counterclaims against Gentry in Circuit Court for the State of Oregon, in and for the County of Washington, Case No. 21CV31296 (the “Underlying Lawsuit”). A copy of Gentry’s Complaint in the Underlying Lawsuit is attached as Exhibit 3 and is incorporated by reference. A copy of Clark’s Answer Affirmative Defenses and Counterclaims in the Underlying Lawsuit is attached as Exhibit 4 and is incorporated by reference.

9.

Clark engaged Gentry in a contract (the “Contract”) dated June 11, 2020, to perform construction services as a general contractor at 7100 SW Ridgemont Street, Washington County, Oregon 97225 (the “Residence”), a single-family residence owned by Clark. The estimate for Gentry to complete its work was \$530,986. Gentry alleges that, after making payments to Gentry

Construction in the amount of \$494,112, Clark breached the parties' agreement by failing and refusing to pay Gentry the remaining \$36,972. In her counter claim against Gentry, Clark alleges that Gentry breached the parties' agreement by failing to properly perform its work pursuant to the scope and budget included in the contract and consistent with standard industry practice, that Gentry performed its work negligently, and that Clark has suffered approximately \$443,581.71 in damages. Additionally, Clark seeks undisclosed damages for her emotional distress, stress, and inconvenience suffered as result of Gentry's conduct, as well as reasonable attorney fees and costs.

10.

Gentry tendered the Underlying Lawsuit to Developers for defense and indemnity. Claims Resource Management, Inc., on behalf of Developers, acknowledged receipt of the tender, investigated the tender under a full and complete reservation of rights, and has retained counsel to defend Gentry in the Underlying Lawsuit. Developers seeks a declaration as to its duty to defend and indemnify Gentry under the Policies.

CLAIM FOR RELIEF

(Declaratory Relief under 28 U.S.C. § 2201)

11.

Developers incorporates by reference herein the allegations set forth in paragraphs 1 through 10 above.

12.

A present and actual controversy exists regarding the respective rights of Developers and Gentry under the Policies, and Developers' obligations, if any, to defend and indemnify Gentry against the Underlying Lawsuit.

13.

Developers seeks and is entitled to a speedy hearing and declaration of the rights of the parties pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201.

14.

Developers seeks a legal determination and declaration that it has no duty to defend or indemnify Gentry under the terms, conditions, exclusions, and endorsements contained in the Policies, and pursuant to law in relation to the Underlying Lawsuit.

15.

A declaratory judgment is both necessary and proper at this time and does not prejudice Gentry in the Underlying Lawsuit. Such a declaration is necessary and appropriate in order for the parties, and each of them, to ascertain their rights and duties under the Policy.

DEMAND FOR JUDGMENT

Therefore, Developers demands that judgment be entered declaring that Developers does not owe any duty to defend or indemnify Gentry against the counterclaims asserted in the Underlying Lawsuit, awarding Developers costs and expenses, and any other relief the Court deems appropriate.

Dated this 1st day of December, 2022.

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